

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 17-1976V

Filed: April 30, 2019

UNPUBLISHED

KATHERINE DUKE,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*John Robert Howie, Howie Law, PC, Dallas, TX, for petitioner.*

*Mallori Browne Openchowski, U.S. Department of Justice, Washington, DC, for respondent.*

### **DECISION AWARDING DAMAGES**<sup>1</sup>

**Dorsey**, Chief Special Master:

On December 19, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered Shoulder Injury Related to Vaccine Administration (SIRVA) as a result of her October 30, 2015 influenza (“flu”) vaccination. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 20, 2018, a ruling on entitlement was issued, finding petitioner entitled to compensation for SIRVA. On April 29, 2019, respondent filed a proffer on

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<sup>1</sup> The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

award of compensation ("Proffer") indicating petitioner should be awarded \$94,128.62, which is comprised of damages for pain and suffering in the amount of \$90,000.00, damages for past lost wages in the amount of \$1,129.01, and damages for unreimbursed out-of-pocket medical expenses in the amount of \$2,999.61. Proffer at 1. In the Proffer, respondent represented that petitioner agrees with the proffered award. *Id.* Based on the record as a whole, the undersigned finds that petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **the undersigned awards petitioner a lump sum payment of \$94,128.62 (which is comprised of damages for pain and suffering in the amount of \$90,000.00, damages for past lost wages in the amount of \$1,129.01, and damages for unreimbursed out-of-pocket medical expenses in the amount of \$2,999.61) in the form of a check payable to petitioner, Katherine Duke.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Nora Beth Dorsey**

Nora Beth Dorsey  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
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SECRETARY OF HEALTH AND  
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No. 17-1976V

Chief Special Master Dorsey

ECF

**RESPONDENT’S PROFFER ON AWARD OF COMPENSATION**

**I. Compensation for Vaccine Injury-Related Items**

On December 17, 2018, respondent conceded that entitlement to compensation was appropriate under the terms of the Vaccine Act. Thereafter, on December 20, 2018, Chief Special Master Dorsey issued a Ruling on Entitlement finding that petitioner was entitled to vaccine compensation for his Shoulder Injury Related to Vaccine Administration (“SIRVA”). Based on the evidence of record, respondent proffers that petitioner should be awarded \$94,128.62, which is comprised of damages for pain and suffering in the amount of \$90,000.00, damages for past lost wages in the amount of \$1,129.01, and damages for unreimbursed out-of-pocket medical expenses in the amount of \$2,999.61. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

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<sup>1</sup> Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

**II. Form of the Award**

The parties recommend that compensation provided to petitioner should be made through a lump sum payment of \$94,128.62, in the form of a check payable to petitioner. Petitioner agrees.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

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Assistant Attorney General

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CATHARINE E. REEVES  
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s/ Mallori B. Openchowski  
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